

**WINDELS MARX LANE & MITTENDORF, LLP**

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Charles E. Simpson (CES-2130)

Attorneys for Defendant, Hassan Tatanaki

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11 Case
	:	No. 08-22581(ASH)
	:	
EOS AIRLINES, INC.,	:	
	:	
Debtor.	:	
-----X		
EOS AIRLINES, INC.	:	
	:	Adv. Pro. No. 08-08406 (ASH)
Plaintiff,	:	
	:	
-against-	:	
	:	
NATIONAL CITY BANK OF MIDWEST	:	
HASSAN TATANAKI,	:	
FREEMARKET GLOBAL, LTD.	:	
ERIKA VILLALBA, and JOHN DOE	:	
	:	
Defendants.	:	
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**DESIGNATION OF CONTENTS FOR INCLUSION IN  
RECORD ON APPEAL AND STATEMENT OF ISSUES ON APPEAL**

Hassan Tatanaki (hereinafter referred to as "Appellant" or "Mr. Tatanaki"), in furtherance of Appellant's appeal from the Order and Decision of the Honorable Adlai S. Hardin Jr., United States Bankruptcy Judge, dated and docketed January 28, 2009, designates the following record and issues on appeal:

**I. STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW**

(A) The standard of review for findings of fact is the “clearly erroneous” standard, as set forth in Fed. R. Bank. P. 8013.

(B) Issues of law are reviewed de novo. The issues presented on appeal are as follows:

- (i) Whether Article 19 of the *Convention for the Unification of Certain Rules for International Air Carriage by Air Done at Montreal on 28 May 1999* (the “Montreal Convention”) applies to Defendant Hassan Tatanaki’s claims for damages arising from the delay of the aircraft operated by Plaintiff Eos Airlines, Inc.

**II. DESIGNATION OF RECORD ON APPEAL**

1. Document No. 1, filed on 9/18/2008 – Complaint against National City Bank of Midwest, Hassan Tatanaki, Freemarket Global, Ltd., Erika Villalba, John Doe, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
2. Document No. 5, filed on 10/17/2008 – Answer to Complaint and Counterclaim against Eos Airlines, Inc., filed by Charles E. Simpson on behalf of Hassan Tatanaki.
3. Document No. 8, filed on 10/20/2008 – Answer to Complaint and Counterclaim against Eos Airlines, Inc., filed by Marie Polito Hofsdal on behalf of National City Bank, a national banking association, successor by merger to National City Bank of Midwest.
4. Document No. 11, filed on 11/05/2008 – Debtors Motion to Dismiss Counterclaims of Hassan Tatanaki and Motion for Partial Judgment on the Pleadings, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
5. Document No. 14, filed on 11/06/2008 – Affirmation in Support of Plaintiff’s Request to Enter Default of Freemarket Global, Ltd., filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
6. Document No. 15, filed on 11/06/2008 – Answer to the Counterclaim, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.

7. Document No. 18, filed on 11/14/2008 – Clerk’s Entry of Default against Freemarket Global, Ltd.
8. Document No. 19, filed on 11/17/2008 – Objection to Debtors Motion to Dismiss Counterclaims of Hassan Tatanaki and Motion for Partial Judgment on the Pleadings, filed by Marie Polito Hofsdal on behalf of National City Bank, a national banking association, successor by merger to National City Bank of Midwest.
9. Document No. 21, filed on 11/19/2008 – Motion for Default Judgment Against Freemarket Global Ltd., filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
10. Document No. 23, filed on 11/21/2008 – Objection to Motion of Eos Airlines, Inc. to Dismiss Counterclaims of Hassan Tatanaki and for Partial Judgment on the Pleadings, filed by Charles E. Simpson on behalf of Hassan Tatanaki.
11. Document No. 25, filed on 11/26/2008 – Motion for Order (I) Directing Deposit of Certain Escrow Funds into Court; (II) Releasing National City Bank from All Liability Associated with Certain Escrow Funds and Dismissing All Claims By and Against National City Bank; and (III) Establishing Procedures for Approval of Fees and Expenses, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
12. Document No. 26, filed on 11/26/2008 – Response of Debtor to Limited Objection of National City Bank, A National Banking Association, Successor by Merger to National City Bank of Midwest to Debtors Motion to Dismiss Counterclaims of Hassan Tatanaki and Motion for Partial Judgment on the Pleadings, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
13. Document No. 27, filed on 11/26/2008 – Response of Debtor to Objection of Hassan Tatanaki to Debtor’s Motion to Dismiss Counterclaims of Hassan Tatanaki and Motion for Partial Judgment on the Pleadings, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.
14. Document No. 29, filed on 12/01/2008 – Notice of Withdrawal Without Prejudice of Motion for Order (I) Directing Deposit of Certain Escrow Funds into Court; (II) Releasing National City Bank from All Liability Associated with Certain Escrow Funds and Dismissing All Claims By and Against National City Bank; and (III) Establishing Procedures for Approval of Fees and Expenses, filed by Nicholas J. Brannick on behalf of Eos Airlines, Inc.

15. Document No. 30, filed on 01/28/2009 – Order signed on 1/28/2009 Granting Motion to Dismiss Counterclaims of Hassan Tatanaki and Motion for Partial Judgment on the Pleadings.
16. Document No. 31, filed on 02/05/2009 – Notice of Appeal, filed by Charles E. Simpson on behalf of Hassan Tatanaki.

Dated: New York, New York  
February 17, 2009

**WINDELS MARX LANE & MITTENDORF, LLP**

**By:** /s/ Charles E. Simpson  
**Charles E. Simpson (CES-2130)**  
**A Member of the Firm**

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